

The United Nations: the Embarrassment of International Law

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The United Nations should be working towards an international community living in peace under the aegis of international law. Although progress was made in its early years, notably in de-colonisation, with its membership increased from 50 to 189, major inequalities remain between its nations and their peoples. The Security Council, and in particular its five permanent members, has been guilty of double standards in enforcing international law. Investment should create prosperity and not increase demand for arms. Independent oversight of the UN, and particularly the SC, by civil society is needed. If the legitimacy of the UN is to be restored, the SC should become more representative, the power of the General Assembly restored, and the role of the International Court of Justice increased. All members of the UN, especially the P5, must respect international law as enshrined in the UN Charter and Conventions.

Many years ago, Secretary-General Dag Hammarskjöld said that he saw the United Nations as ‘a venture in progress towards an international community living in peace under laws of justice’. I suspect that he would be disappointed at the progress the UN has made since. He might well note that the ‘laws of justice’ – international laws - are indeed in place, but sadly rejected, violated with impunity, or simply neglected, by many member states. Failure by the Security Council to respect the provisions of international law, flowing from the Charter itself, now sadly serves to embarrass the UN and its member states. Conspicuous is the absence of balanced application - domestically, internationally and most damagingly via decisions of the Security Council.

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Nevertheless the UN remains the most essential instrument for world peace and security. Global interdependence is an integral reality of the same. International law and its proper application by member states of the UN are essential to the product of inter-dependence – peace and security. The Security Council is charged with the responsibility for the maintenance of that global well-being for all in both North and South.

Inequalities amongst nations and their peoples are only too apparent inside the United Nations, inside the Council, and throughout the world. We are all too familiar with the terrible impact of, among others, North- driven globalisation; ethnic strife; genocide; the internally displaced; refugees; military coalitions; aggression in several forms; modern warfare with its high level bombing of civilians; exploitation of the environment; abuse of non-renewable natural resources; and the application of double standards in foreign policy and the work of the Security Council.

In short, and it is bizarre in the year 2002, the ancient notion of ‘might being right’ is alive and well, and perceived by some to be acceptable! Speaking from my layman’s viewpoint, and from my own experience serving the United Nations - and recognising that 34 years does not an expert make – in particular in respect of the workings of the Security Council, this is where I focus. It is international law and its proper application that must drive the work of the United Nations - not the ‘might’ and national interests of some, the most powerful, member states.

A sole hyper-power is dangerous. Rejection of international law is both arrogant and irresponsible. Despite the inherent weaknesses of the Charter, the peoples of the world need the UN to function, not as intended in 1945, but more in the best interests of all peoples and all states around the world.

This is not a ‘feel-good’ lecture on the UN, yet I am the first to underline the good work that is being accomplished everyday by agencies and bodies within the UN Family. Instead – still a believer in United Nations value-added - I want to share some personal thoughts on the UN and its

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application of international law. I examine the reality of that application today, some of the consequences and what we might want to consider doing about creating positive change. Or can we indefinitely ignore the corruption of the Charter, already imperfect, by the five Permanent Members of the Security Council? I do not believe we can.

However, first let me say that one of the reasons I was pleased to accept the invitation to deliver the Erskine Childers lecture for 2002 is that over many years I had the pleasure to work with Erskine himself. I first met him in Bangkok, Thailand when he headed up an innovative project of his own making funded by the United Nations Development Programme to demonstrate the importance of communications and information in the successful implementation of development assistance projects. He showed most effectively that flows of information within-country between the parties, concerned such as government, community and individual, were invaluable for success.

Later, in the UNDP headquarters in New York, I again had the pleasure of working with Erskine when, as Head of UNDP information Services, he brought fresh creativity to information in support of development activities within the UN system of organisations itself. And finally, when I was Assistant Secretary-General for UN Human Resources Management, I met with Erskine as he collaborated with Sir Brian Urquhart on a number of think pieces. I was tapping his brain, not he mine!

In this lecture, I make use of some ideas that he and Brian Urquhart developed in their 1999 book.¹ This publication addresses various means to enhance the effectiveness of the UN, including the concept of a one term Secretary-General selected in a thorough and rational manner on the basis of identifiable criteria. This is of course the kind of revolutionary change we have yet to see, and we sadly have to acknowledge that most member states, certainly the powerful veto-holders, do not appear to want an independent and strong Secretary-General who just might take initiatives, or use his power under Article 99 of the Charter to publicly admonish and

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demand compliance with the obligations of membership.

I think that Erskine would agree with me that global well-being in the broadest sense, demands that we, and the member states, must learn to perceive internationally. This includes awareness of, and commitment to, the obligations that the United Nations imposes, and the importance of strength, authority, integrity and effectiveness. And a future of global peace and security for all, without a legally functioning, morally strong and fully participatory UN, is unlikely and perhaps impossible.

We need to remember that the UN is the only legitimate world body intended to legislate, promote and demand respect for human rights and the well being of all men and women, North and South, without regard to race, sex, language, or religion, as set out in Article 1 of the Charter. These are goals that I imagine all of us in this room share. But the UN and its ability to serve those ends is in great danger.

Recently we have witnessed the humiliation of the Secretary-General and the Security Council by outright rejection of the resolution to have an investigation of the tragedy of Jenin in the occupied territories of Palestine. We should not forget the deliberate bypassing of the UN in the form of the NATO attacks on Kosovo. We see Iraq having little choice but to refuse re-entry of UN disarmament inspections, given American intentions to attack militarily once again, Washington legislation calling for the overthrow of its head of state, and the disgraceful record of UNSCOM functioning as an intelligence source. Can we ignore the illegal aggression on the people of Afghanistan undertaken without any discussion by the Security Council under Chapter VII of the Charter, a prerequisite for any such military action, and in violation of the defensive-only constraints set out in Article 51?

This lecture is in part intended to unsettle your thinking and to have you consider the necessity of reform in respect of the UN, in particular the Security Council - and then do something about it. I am hopeful that some

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of you are in positions, or will be in positions one day, to do just that.

One of my own failures, of which my daughter Fransisca frequently reminds me, is that my generation has neglected many aspects of the global environment. I am sure you are all sensitive to the need for environmental protection and monitoring. Today, we are also guilty of neglecting the UN to the extent that we now have evidence of an urgent requirement for oversight. I refer to active monitoring of the most important and fundamental work of the organisation, namely peace and security - the unique mandate of the Security Council. Just as we neglect the corruption of the global environment, we are also neglecting the corruption and proper functioning of the Security Council. Certain member states are treating the mandate of the Council and its proper application of international law as carelessly as many of us treat the environment and the earth's scarce natural resources.

The history of the UN and its origins in 1945 after the appalling horrors of World War II are well known. The victors of that war established the UN to tackle worthy goals. Unfortunately, they also determined to protect their own national interests and desire for control. Another League of Nations, of which the United States was not a member, was to be avoided. This was done among other things through the establishment of veto power and permanent membership of the Security Council for the chosen few, that is, the victorious nations of the war. It was founded with the participation of only some 50 independent states. Happily, thanks to the end of most colonial regimes, today's UN has 189 member states, with the recent addition of Switzerland. Whether these member states are truly independent or not, I leave my listeners and readers to decide. It is difficult to define independence in the context of economic and military domination by a few powers that are wedded to the 'might is right' concept.

Despite the hidden - and not so hidden - agendas of 1945, enlightened work was accomplished in San Francisco when the Charter was adopted and again in 1948 when the Universal Declaration of Human Rights was

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established. In addition, throughout the 1950s and 1960s the General Assembly played a key role as the venue and the instrument for the global process of de-colonisation. However, the unmonitored and unrepresentative power of the Security Council today is undermining much of that hopeful and participatory beginning.

Over the years the role and the core importance of the fully representative GA has been diminished. This is also true of the International Court of Justice - the World Court. The important work of the Economic and Social Council has been neglected as development assistance and co-operation has been consistently under-funded. Instead, billions of US dollars are invested in military research and development and arms manufacture and sales, mainly by the same five Permanent Members of the Security Council who are entrusted with maintaining peace and security! At the same time, the most basic human rights of billions are neglected - the rights to development, food, health-care, education, employment and housing. Even the right to live, and have hope, cannot be taken for granted in our sorry world.

Obviously all this must be changed. Remarkably, the head of the World Bank acknowledges that poverty, which undermines these same human rights, is the root cause of terrorism. Why did the SC fail to discuss that reality after 11 September 2001? Why do major member states think that more violence such as we have seen in Afghanistan and Palestine will bring an end to terror? Why is it that the vulnerability the North now suddenly feels, does not lead to a new understanding - that billions throughout the South feel the same life-threatening vulnerability every day? Yet we are surprised by the violent cry for recognition and attention that terrorism represents.

Perhaps the permanent members of the Security Council, the largest arms traders, have not learned the importance of investing in live people and vital communities? That seems incredible. It should be obvious that they need to spend generously on conflict prevention in its various forms,

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instead of billions of dollars on war, aggressive interventions and often belated peace-keeping - which, by definition, represents a failure of the UN to anticipate and assist in resolution of differences before they grow out of control. The UN must invest in people before the damage is done, before ethnic strife has killed, before genocide, and before the refugees and displaced persons have been wrenched from their homes and livelihoods. Is that so difficult?

Member states with global and exploitative ambitions must be convinced by their friends and Northern allies to accept an organisation capable and primed to intervene non-violently, even though this would hurt their profitable arms trade. They need to allow the UN to use its moral authority to establish respect for civil, political and other human rights and to draw down on the benefits of cultural, religious and social differences, in keeping with the spirit of the Charter.

Investment must be used to create prosperity and provide hope. Investment is poorly used when intended to increase demand for arms manufacture and sales; to open opportunities to test new and dreadful weapons, including so-called smart bombs and depleted uranium; to facilitate conditions of irreparable damage to the environment and in exploiting cheap labour, thereby set aside the economic and social rights of others. Investment should better be used to encourage and enhance social, political and economic improvements consistent with the Universal Declaration of Human Rights. For example, money should be put into education. Do we doubt that such an investment would reap extraordinary rewards for us all? Aggression under the guise of humanitarian intervention, or the American 'war on terror', the terrible consequences of which we have witnessed recently in Afghanistan and in Palestine, is not a productive investment for any country.

The neglect of Chapter VI and abuse of Chapter VII of the UN Charter by the five permanent members of the SC has become increasingly questionable. And 'questionable' is too gentle a word – I should say that it

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has become increasingly frightening for the smaller member states. And we should all be frightened for example, by the deadly military reaction – via State terrorism – to crises that should be addressed non-violently by the international community under Chapter VI. We cannot afford to forget that the vast majority of member states represented in the General Assembly have no involvement in Security Council decisions that affect their world stability, and often tragically create situations that lead to greater human chaos and suffering.

Structurally and in reality, there is no higher authority in or outside the UN to monitor the SC and interpret proper application of the Charter. The World Court has no established role in this regard. Many of us believe that some independent civil society oversight body is required urgently, a body with a North/South mix to oversee Council decisions and their implementation and impact on civilians in particular. Simple international publicity, exposing consequences, double standards and commission of crimes against humanity, might suffice to diminish and ultimately end the corruption of the Charter. Public international embarrassment might curb the excesses of the Permanent Members.

For example, currently we see every day double standards of application in the Middle East resulting from the vested interests of one or more Permanent Members. Some ‘friends’ can reject UN resolutions with impunity whilst other member states do so at dreadful cost to their innocent civilian populations, punished by the UN through neglect, sanctions and often warfare - I need not name names.

We have seen the terrible results of the failure of UN member states to acknowledge genocide – as determined by the Convention - in the case of Rwanda. The UN did no better for the thousands killed in Sebrenica. We have seen the terrible consequences of prolonged economic sanctions – almost twelve years of a uniquely comprehensive and punitive UN embargo - for the children and adults of Iraq. We have witnessed Security Council delay in respect of stopping the killing in Timor, and we have

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heard silence for the people of Chechnya. We have witnessed the careless high level bombing attacks on Afghanistan, by 15,000 foot heroes, with loss of civilian life - an attack never considered nor approved by the Security Council under Chapter VII of the Charter.

Most recently we have seen America prevent the UN from protecting the people of Palestine from state terrorism and military invasion of Palestinian space. We watch as massive destruction of human rights take place before our television eyes. We have UN member states that seem unwilling to comprehend the root causes of suicide bombing- the desperation of the weak, marginalised and forgotten - and thereby end the deaths of innocent Israeli civilians. Instead we see the continuation of military aggression and use of sophisticated weapons against an almost unarmed populace, for whose safety the UN is responsible. As mentioned already, we have witnessed the almost unbelievable rejection by Israel, supported by the US, of a SC resolution calling for an examination of the tragedy of Jenin.

I hardly need to recall the failure of the UN to stop, or even address, the crimes against humanity committed by the UN-backed American coalition during the Gulf War. Are we to understand that the illegal invasion of Kuwait is justification for the Basra road massacre, or the employment of depleted uranium? Nor do I need to recall the UN failure to intervene in the invasion of Lebanon, in refugee-camp massacres, and the 22-year-long illegal occupation of southern Lebanon combined with repeated punitive air attacks on civilian infrastructure in breach of the Geneva Conventions and Protocols.

The common factor in these neglectful cover-up situations is the involvement and vested self-interest of Permanent Members of the Security Council, the same member states entrusted to defend the word and spirit of the Charter, not diminish it, and certainly not to actively corrupt it.

These cases of double standards and national self-interest in Council decision-making emphasise the dangers in the future. If we are in the

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coming decades, to have a United Nations that protects the best interests of the majority of people throughout the world, North and South, as opposed to protecting the vested interests of the Northern powers, reform has to be undertaken.

Reform in itself will not suffice unless there is a significant change of attitude on the part of member states, particularly the veto-wielding five. I am not advocating world government. I *am* calling for recognition that no one country is above, or immune to the requirements and obligations of international law. Respect for such law ultimately best serves, and protects, all member states, despite the need for periodic compromise and adjustment of domestic law. When we have rejection of such law by the P5, and in particular by the US, we have a situation that undermines the efforts and moral authority of the UN to have other less powerful member states comply.

This crisis of rejection applies to such fundamental provisions of international law as the Convention on the Rights of the Child; the Convention on Land Mines; the Kyoto Accords; the Biological and Toxin Weapons Convention; the Law of the Sea; and the International Criminal Court, to mention a few. You will appreciate that not only is American leadership undermined by its unwillingness to be part of such global legal provisions, but, more importantly, the credibility of the UN itself is undermined. It is threatening and embarrassing for the world body to have its most powerful member state not endorse such important international legal provisions.

Congressional rejection of UN provisions and international conventions, and its willingness to disregard Security Council resolutions, is most damaging. The situation is not helped by having an unfriendly host country (an issue Erskine Childers addressed) openly criticise and threaten the organisation and certain member states wishing to appear at UN headquarters, and at the same time, while failing to pay financial assessments, endlessly hammering the UN for its bureaucracy and

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undermining – and effectively removing - its Secretary-General when dissatisfied.

The voices of the South must be heard in the SC, and the power of the more representative General Assembly needs to be restored. The World Court needs a greater role, with its decisions binding on member states. The weakening of the independence of the UN has led to a crisis of confidence in the organisation today that is very apparent as one travels and speaks with people in Europe, the Middle East and throughout much of the South.

If we are to enhance the credibility of the UN, the Security Council cannot remain unrepresentative. It cannot continue to be manipulated by a few and must be restructured. It must have full and effective representation of all the countries of the world, North and South. The majority of people, including the great and small countries of the world, must have rotational permanent and equal presence on the Council. In my view, we must have permanent seats for elected regional representation, that is, for the member states of Central and South America, Southern and South East Asia and of course, proper permanent representation of Sub-Sahara Africa and the Middle East.

We must change the Old Boys' Club of Five into a non-veto holding chamber, where the voices of the South will be permanently present, and more importantly, heard and respected. That will change decision-making, provide added strength and wisdom to the Council and bring viewpoints to bear that remain largely unheard today. We must demand only one standard of application for all, including the veto-powers, with respect for the intent and spirit of the Charter, the Universal Declaration of Human Rights and other aspects of international law.

These changes need to be combined with an oversight authority to monitor the performance of the Council, the quality of its decisions, their compatibility with the Charter itself and other international legal provisions.

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If we do not move the UN in this direction, much of the world will continue to question its very legitimacy and its decisions, which impact so widely, and sometimes so dangerously, on countries that have no access to the decision making process. Without such legitimacy, the role of the Security Council and the UN itself is undermined. This will take the UN to a situation more untenable than we have today – where the failure of Permanent Members and other states to respect international law not only causes great embarrassment, but damages the importance, credibility and authority of the UN.

Those of you associated with the United Nations, who want to see an organisation that is respected and whose decisions are compatible with the Charter, must recognise the responsibility that each one of us has for the restoration of credibility. We must all do our part to bring the UN back from the brink - which is where it is today. We need to work for a membership of states and participation of civil society that revitalises and enhances the organisation, and accepts the obligations of the Charter and other aspects of international law. The resolutions of the SC and the GA must be compatible with the spirit and intent of the Charter, and so must the consequences of these decisions as they apply to member states and their peoples.

We must work towards remaking the United Nations in the spirit of the preamble to the Charter to reaffirm ‘...faith in fundamental human rights, in the dignity and worth of the human person, in equal rights of men and women and of nations large and small.....’.

Reference

1. Childers E, Urquhart B. *A World in Need of Leadership: Tomorrow's United Nations*. Uppsala: Dag Hammarskjöld Foundation, 1996.

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